

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

55 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(415) 703-4863

MILES E. LOCKER, Attorney for the Labor Commissioner

December 14, 2001

Richard D. Prochazka
Richard D. Prochazka & Associates
PO Box 881566
San Diego, CA 92168-1566

Re: Meal Period Requirements for Ready-Mix Drivers Working
Under the Terms of a Collective Bargaining Agreement

Dear Mr. Prochazka:

This in response to questions raised by certain employers and union officials following the issuance of our letter, dated April 2, 2001, on the above-referenced topic. In that letter, we concluded that unionized ready-mix drivers employed by cement plants who deliver product from the plant to the purchaser's jobsite are covered by the meal period and rest period provisions of Industrial Welfare Commission ("IWC") Order 1-2001, regardless of whether these drivers are covered by a collective bargaining agreement ("CBA") that meets the CBA opt-out requirements of Labor Code §514¹, in that the IWC order provides for no CBA opt-out from the wage order's meal and rest period provisions.

The April 2, 2001 letter contained a detailed discussion of the prerequisites for a lawful on-duty meal period. In order to have a lawful on-duty meal period, 1) the nature of the work must prevent the employee from being relieved of all duty, and 2) the employee and employer enter into a written agreement authorizing the on-duty meal period, and 3) this written agreement expressly states that the employee can revoke the agreement in writing at any time. An on-duty meal period is not permitted if any of these factors are not present.

¹ Since the issuance of that letter, the Governor signed SB 1208, which amends Labor Code §514 to narrow the statutory opt-out, so that only sections 510 (overtime compensation requirements) and 511 (alternative workweek agreements) are made inapplicable to employees covered by a CBA that provides for a regular rate of 30% more than the minimum wage and that provides for premium pay for all overtime hours worked. Thus, starting on January 1, 2002, the statutory requirement for meal periods, found at Labor Code §512, will apply to all employees, including those covered by CBAs which meet the opt-out requirements of section 514.

2001.12.14

Most of the questions that followed this letter were in response to a footnote that explained that an on-duty meal period is permitted to the extent that an off-duty meal period cannot be provided when "the nature of the work prevents an employee from being relieved of all duty," and the employee has previously signed a voluntary authorization for an on-duty meal period that comports with the requirements of the IWC order. We noted:

"In situations when the product would be damaged or destroyed if the employee takes an off-duty meal period, the existence of a voluntary written authorization would therefore permit an on-duty meal period. For example, the nature of the work would probably prevent an off-duty meal period *during a cement pour, if the services of the driver are needed during the pour.*" (Italics added.)

On June 14, 2001, the State Labor Commissioner, Arthur S. Lujan, and I, observed various cement "batch plant" operations, including cement pours, in the San Diego area, at the request of employers and union officials seeking further guidance on the issue of whether the nature of the work will allow for an on-duty meal period. Nothing that we observed would cause us to question the analysis set forth in the April 2, 2001 letter. Indeed, in our field trip, we learned that there are some cement pours that cannot be interrupted, because of the composition of the cement, or the temperature at the pour, the timing of the pour, or other factors. Other cement pours can be interrupted to allow for a thirty minute break, and on some occasions, the construction workers employed at the project will actually stop work midway through a pour. However, we were told that the driver must remain with his or her truck at all times while it is carrying a load, so it would appear that there may be no real opportunity for an off-duty meal period when the driver is at the construction site until the cement has been poured from the truck². But we also learned that even when a driver must work through a pour, once the pour is over and he or she is ready to return to the batch plant, it should then generally be possible for the driver to enjoy an off-duty meal period.

In short, the observations we made left little doubt that it would be inappropriate to conclude that ready-mix drivers can never, or can always, meet the prerequisites for a lawful on-duty meal period. Rather, for this particular occupation, it would seem that this determination can only be made on a case by case, and day by day basis, using the criteria set out in the wage order's meal period provision.

² Of course, if the driver has a helper, it should be possible for the driver to take an off-duty meal period during a pour, or during the period while waiting at the jobsite to start pouring.

December 14, 2001

Page 3

Thank you for your ongoing in California wage and hour law.
Feel free to contact us with any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Miles E. Locker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Miles E. Locker
Attorney for the Labor Commissioner

cc: Art Lujan
Anne Stevason
Tom Grogan
Roger Miller
Greg Rupp
Nance Steffen
Bridget Bane, IWC

2001.12.14